

DLD-004

October 3, 2019

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **19-1528**

GARTOR KIKI BROWN, Appellant

VS.

LT. MAXWELL, et al.

(M.D. Pa. Civ. No. 18-cv-01527)

Present: RESTREPO, PORTER, and NYGAARD, Circuit Judges

Submitted are:

- (1) By the Clerk for possible dismissal due to a jurisdictional defect;
- (2) Appellant's motion for leave to appeal in forma pauperis, pursuant to Rule 24, Federal Rules of Appellate Procedure;
- (3) Appellant's motion to reopen the appeal;
- (4) Appellant's second motion to reopen the appeal;
- (5) Appellant's Motion to Waive Appeal

in the above-captioned case.

Respectfully,

Clerk

(continued)

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ORDER

The foregoing motion to proceed in forma pauperis (“IFP”), and the motions to reopen the appeal, are granted. Brown is required to pay the full \$505.00 fee in installments regardless of the outcome of the appeal. The Court hereby directs the warden or his or her designee to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to the prisoner’s account; or (b) the average monthly balance in the prisoner’s account for the six month period immediately preceding the filing of the notice of appeal. The warden, or his or her designee, shall calculate, collect, and forward the initial payment assessed in this order to the United States District Court for the Middle District of Pennsylvania. In each succeeding month when the amount in the prisoner’s account exceeds \$10.00, the warden, or his or her designee, shall forward payments to the United States District Court for the Middle District of Pennsylvania equaling 20% of the preceding month’s income credited to the prisoner’s account until the fees are paid. Each payment shall reference the appellate docket number for this appeal. The warden, or his or her designee, shall forward payments to the appropriate courts sequentially if there are multiple orders, rather than collecting multiple fees at the same time which would exceed 20% of the prisoner’s account.

The appeal is dismissed for lack of appellate jurisdiction. Brown appeals from the February 14, 2019 order of the District Court, which denied his motion to reopen and struck an amended complaint. However, the matter is proceeding in the District Court. The order appealed is not a “final order [that] ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” See Republic Natural Gas Co. v. Oklahoma, 334 U.S. 62, 68 (1948). Because the order appealed does not dismiss all

claims as to all parties and is not certified by the District Court under either Rule 54(b), Fed. R. Civ. P., or 28 U.S.C. § 1292(b), the order is not appealable at this time. To the extent Brown's Motion to Waive the appeal is directed to this Court, it is denied.

By the Court,

s/ L. Felipe Restrepo
Circuit Judge

Dated: October 21, 2019
Lmr/cc: Gator Kiki Brown
Sean A. Kirkpatrick



A True Copy:

Patricia S. Dodszeit

Patricia S. Dodszeit, Clerk
Certified Order Issued in Lieu of Mandate